

401 WATER QUALITY CERTIFICATION



APPLICATION PACKAGE

California Regional Water Quality Control Board
Santa Ana Region

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I. INTRODUCTION

Section 401(a)(1) of the Clean Water Act states that any **applicant** for a **Federal license or permit** to conduct any activity including but not limited to the construction or operation of facilities which may result in any discharge into navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable water at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act.

Permits or Licenses requiring 401 Certification:

1. National Pollutant Discharge Elimination System (NPDES) permit issued by the Environmental Protection Agency (EPA) under Section 402 of the Clean Water Act
2. Permits issued by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act
3. Permits issued under Sections 9 and 10 of the Rivers and Harbors Act (for activities which may affect navigation)
4. Licenses for hydroelectric power plants issued by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act
5. Licenses issued by the Nuclear Regulatory Commission

II. 401 APPLICATION

In California, all applications for water quality certification must be submitted to the Executive Officer of the Regional Water Quality Control Board (Regional Board) in whose region the discharge may occur. For certifications related to permits issued by FERC, applications must be sent to the State Water Resources Control Board. You should submit two copies of your application to the Regional Board at least 90 days in advance of the project's startup date. For major projects, two copies of the application should be submitted at least 180 days in advance. To be considered complete, the application shall include the following:

1. Written correspondence requesting certification/waiver. The correspondence must contain the following information:
 - a. Applicant/Agent (Consultant) Information:

Name/title/company/address/phone/fax number/e-mail address of project proponent and authorized agent, if applicable.
 - b. Federal Permit/License:

Specify the federal permit or license being sought. For a 404 permit, give the Corps control number if it is available. For nationwide permits, give the applicable nationwide permit number. For non-reporting nationwide permits, state the criteria and basis for

your decision and the nationwide permit number that applies. As described in Item 2 on the next page, attach a copy of the federal permit or license application.

c. Project Description:

Describe purpose, location of project (include map), total area of project site, name(s) and type(s) of water bodies within the project site (river, stream, lake, wetland, harbor, bay, etc.), and total area and types of impacted (temporary and permanent) waters of the U.S., state waters, wetlands, and/or riparian habitats (type and impacts). If available, include plan sheets or design drawings. If the proposed project is part of a larger Master project (*e.g.*, Master Plan or General Plan), include information that shows where the proposed project fits into the overall Plan. Include site photos that show waterbodies and habitat that will be impacted. If available, include geolocation information such as latitude/longitude or township/range/ section coordinates. A more complete project description will expedite certification processing.

d. Water Quality Impact(s):

Describe types of pollutants expected to be generated by the project, impacts to beneficial uses of the waterbody (*e.g.*, loss of groundwater recharge, loss of the waterbody), expected diversions of water around the project, cumulative impacts of the Master project that includes the proposed project. If water quality samples have been collected in the area of the proposed project, include a copy of the analysis(es).

e. Proposed Mitigation Measures:

For loss of beneficial uses: How will losses be offset (*e.g.*, for loss of groundwater recharge, is there recharge capacity elsewhere within the same groundwater basin that will offset the loss from the proposed project; for the loss of warm or cold freshwater habitat, where will these losses be offset).

For loss of wetlands/riparian habitat/waters of the U.S.: Where (onsite/offsite), what type of mitigation (creation, restoration, enhancement, etc.), ratio (areas, value, in-kind or out-of-kind), status of California Department of Fish and Game and U.S. Fish and Wildlife Service review/approval.

f. Threatened and Endangered Species Impacts:

List threatened or endangered species that may be impacted by the construction or operation of the project. Note whether a consultation has been or will be initiated with the U.S. Fish and Wildlife Service. If the project is within the Riverside County Stephens' Kangaroo Rat (SKR) fee area, so state, whether or not SKRs were found within the project boundaries.

g. Storm Water Permit Status:

Note the Storm Water permit status: *e.g.*, Storm Water permit obtained (list WDID or permit number); Notice of Intent has been/will be filed with the State Water Resources Control Board; Storm Water Pollution Prevention Plan has been/will be prepared; Storm Water permit not required because the project area is less than five acres.

List examples of Best Management Practices (BMPs) that will be utilized to minimize environmental impacts during and after construction.

h. Consideration of Project Alternatives:

Explain why the project cannot avoid impacts to wetlands or waters of the U.S. Demonstrate that upland alternatives have been considered and are infeasible.

2. A completed copy of the application for the federal license or permit. The attachments are not required if they are identical to what is being sent in the 401 application package.
3. A copy of any agreement with the California Department of Fish and Game (as per Fish and Game Code Sections 1600-1607). If you have applied for a Fish and Game agreement but have not yet received it, submit a copy of the application. If the proposed project is exempt from Fish and Game jurisdiction, state why it is exempt. For coastal projects, please submit a copy of the Coastal Development Permit from the California Coastal Commission or application thereof.
4. A copy of the final California Environmental Quality Act (CEQA - State) or National Environmental Protection Act (NEPA - federal) document, including the notice of determination. A NEPA document must be functionally equivalent to a CEQA document. If exempt from CEQA/NEPA requirements, specify the code section under which it is exempt. An application may be considered complete without a CEQA document, but we cannot issue a certification or waiver until we receive the final document.
5. Information regarding any other state or federal permits that apply to this project, including, but not limited to: stormwater permit number; dewatering permit number; California Coastal Commission Coastal Development Permit number; status of Section 7 or 10 consultation with the U.S. Fish and Wildlife Service.
6. Appropriate filing fee: If there is a potential for water quality impacts, the filing fee shall be as follows (Section 2200, Title 23, California Code of Regulations):

Fill: One acre or less – flat fee of \$1,000.
 More than one acre - \$1,000 per acre or part thereof (not to exceed statutory maximum of \$10,000).

Dredge: Less than 10,000 cubic yards – flat fee of \$500.
 10,000 to 20,000 cubic yards – flat fee of \$2,000.
 More than 20,000 cubic yards - \$2,000 plus \$250 for each additional 5,000 cubic yards or part thereof (not to exceed statutory maximum of \$10,000).

If there is no potential for water quality impacts (we recommend you consult with Regional Board staff before making this determination), the filing fee is \$500 (covers processing costs for a 401 waiver).

III. TIME LIMITS

Generally, we will issue a 401 Certification within 60 days of receipt of a complete application package. This 60 days includes a 21-day public comment period. A 401 Certification will not be issued prior to the 21-day public comment period.

Cities and Towns within Santa Ana Regional Board Boundaries

If your project is in an area not listed here, please check with the 401 coordinator before submitting your application.

Orange County	
Anaheim	Atwood
Brea	Bristol
Cowan Heights	Cypress
Fountain Valley	Fullerton
Irvine	La Habra
Midway City	Modjeska
Olive	Orange Park Acres
Rossmoor	Santa Ana
Sunset Beach	Surfside
Wintersburg	Yorba Linda

Balboa Island
Buena Park
East Irvine
Garden Grove
La Palma
Newport Beach
Orange
Seal Beach
Tustin

Balboa
Corona Del Mar
El Modena
Huntington Beach
Lemon Heights
North Seal Beach
Placentia
Silverado
Villa Park

Bolsa
Costa Mesa
Foothill Ranch
Industrial
Los Alamitos
Olinda
Red Hill
Stanton
Westminster

Riverside County	
Alberhill	Alessandro
Arnold Heights	Beaumont
Canyon Crest	Canyon Lake
Crestmore	Eden Hot Springs
El Cerrito	Elsinore
Glen Avon	Glen Valley
Home Gardens	Homeland
La Sierra	Lake Elsinore
Lily Cup	May
Moreno	Mountain Center
Ormand	Pedley
Prenda	Quail Valley
San Jacinto	Sedco Hills
Sunnymead	Sunnyslope
Winchester	Woodcrest

Anza
Belltown
Casa Blanca
Edgemont
Ennis
Hemet
Idyllwild
Lake Mathews
Menifee
Nicklin
Pepper Corner
Riverside
Soboba Indian Reservation
Terra Cotta

Arlanza
Belvedere Heights
Cherry Valley
Egan
Fern Valley
Highgrove
Juniper Springs
Lakeland Village
Mira Loma
Norco
Perris
Romoland (Ethanac)
Val Verde

Arlington
Box Springs
Corona
El Casco
Gilman Hot Springs
Hinda
Jurupa
Lakeview
Moreno Valley
Nuevo
Pine Cove
Rubidoux
Sun City
Valle Vista

San Bernardino County	
Alray	Alta Loma
Ballou	Big Bear City
Bryn Mawr	Cajon
College Heights	Colton
Crown Jewel	Cucamonga
Dunlap Acres	Etiwanda
Grand Terrace	Grape
Heart Bar Campground	Highland
Lytle Creek	Marigold
Mountain Home Village	Muscoy
Redlands	Rialto
San Manuel Indian Reservation	
Smiley Park	South Fontana
Warner	Woodlands

Angelus Oaks
Big Bear Lake
Calimesa
Cosy Dell
Del Rosa
Fawnskin
Grapeland
Keenbrook
Mentone
Oak Glen
Rochester
Scotland
Sugarloaf
Yucaipa

Arrowhead Springs
Bloomington
Champagne
Crafton
Devore
Fontana
Guasti
Loma Linda
Montclair
Ontario
San Antonio Heights
Seven Oaks
Upland

Baldwin Lake
Boulder Bay
Chino
Crestmore
Doble
Forest Falls
Harlem Springs
Los Serranos
Moonridge
Rancho Cucamonga
San Bernardino
Skyland
Verdemont

The following cities or areas straddle two regions. Please confirm which region has jurisdiction over your project before submitting your application. (The numbers in parentheses indicate which regions share the area)

Orange County	
Crystal Cove (8/9)	El Toro (8/9)
Portola Hills (8/9)	

Laguna Hills (8/9)

Lake Forest (8/9)

Leisure World (8/9)

Riverside County	
Highland Springs (8/7)	Morongo Indian Reservation (8/7)

Ramona Indian Reservation (8/9)

San Bernardino County	
Crestline (8/6)	Mount Baldy (8/4)

Rimforest (8/6)

Running Springs (8/6)

Valley View Park (8/6)

401 WATER QUALITY CERTIFICATION APPLICATION

California Regional Water Quality Control Board Santa Ana Region

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Riverside, CA 92501-3339

Phone: (909) 782-4130
Fax: (909) 781-6288
<http://www.swrcb.ca.gov/~rwqcb8>

Instructions: Fill out all information on the form that applies to your project. *Filling out this form is **not** required*; a cover letter that includes this information is acceptable (including all the information described in this form will expedite the processing of your request). If desired, you may also enter this information into a 401 waiver template document. You may obtain an electronic copy of this form or a waiver letter template in Word 97 format by either calling the phone number above and requesting to speak with the 401 Coordinator or by going to the following Internet address: <http://www.swrcb.ca.gov/~rwqcb8/html/401.html>

Applicant

Name _____

Title _____

Company _____

Address _____

City/State/Zip Code _____

Telephone Number _____

Fax Number _____

E-mail Address _____

Agent (consultant)

Name _____

Title _____

Company _____

Address _____

City/State/Zip Code _____

Telephone Number _____

Fax Number _____

E-mail Address _____

Project description (See information package for types of information needed). Continue on a separate page if needed.

_____ Continued on separate page(s)

Receiving water

Name of Affected Waterbody _____

Major Tributary _____

Township/Range/Section/Quadrangle _____

Latitude/Longitude _____

Fill area

Wetland _____ acres of permanent, _____ acres of temporary impact

Riparian _____ acres of permanent, _____ acres of temporary impact

Streambed _____ acres of permanent, _____ acres of temporary impact

Lakebed _____ acres of permanent, _____ acres of temporary impact

Ocean _____ acres of permanent, _____ acres of temporary impact

Dredge volume _____ cubic yards

Federal Permit

Individual - list Corps control number _____

Nationwide – list permit number _____

Is completed copy of federal application attached? _____ yes _____ no
(attachments not required if they are the same as
the 401 application attachments)

Compensatory mitigation (list number of acres and waterbody type)

Created _____ acres of _____

Restored _____ acres of _____

Preserved _____ acres of _____

Mitigation Bank – describe

Other – describe

None

Expected impacts to threatened or endangered species (list species)

Is the project within the Stephens' Kangaroo Rat fee area? _____ yes _____ no

Is a Section 7 or 10 Consultation with the U.S. Fish and
Wildlife Service necessary? _____ yes _____ no

Has the U.S. Fish and Wildlife Service issued a Biological Opinion? _____ yes _____ no

If yes, list date Opinion was issued _____

Storm Water permit status

Obtained storm water permit – list WDID number _____

Filed Notice of Intent with the SWRCB _____ yes _____ no

Prepared Storm Water Pollution Prevention Plan _____ yes _____ no

If you don't need a Storm Water permit, state why _____

These BMPs will be utilized to minimize environmental impacts

Dewatering permit

Will groundwater dewatering be necessary? _____ yes _____ no

Dewatering permit number _____

Streambed Alteration Agreement

Agreement issued – attach copy

Applying for Agreement – attach copy of application form

Exempt – state why

Coastal Development Permit

Permit issued – attach copy

Applying for permit – attach copy of application form (without attachments)

CEQA

Is final CEQA document and notice of determination attached? _____ yes _____ no

If not final, what is hearing date? _____

If exempt, list section which applies _____

Filing fee:

Is it attached? _____ yes _____ no

Appropriate filing fee: If there is a potential for water quality impacts, the filing fee shall be as follows (Section 2200, Title 23, California Code of Regulations):

Fill: One acre or less – flat fee of \$1,000.
More than one acre - \$1,000 per acre or part thereof (not to exceed statutory maximum of \$10,000).

Dredge: Less than 10,000 cubic yards – flat fee of \$500.
10,000 to 20,000 cubic yards – flat fee of \$2,000.
More than 20,000 cubic yards - \$2,000 plus \$250 for each additional 5,000 cubic yards or part thereof (not to exceed statutory maximum of \$10,000).

If there is no potential for water quality impacts (we recommend you consult with Regional Board staff before making this determination), the filing fee is \$500 (covers processing costs for a 401 waiver).

Useful Internet sites:

Santa Ana Regional Water Quality Control Board 401 Permit Application Package:

<http://www.swrcb.ca.gov/~rwqcb8/html/401.html>

Army Corps of Engineers 404 Permit Application:

http://ceres.ca.gov/wetlands/permitting/sec_404.html

Department of Fish and Game Streambed Alteration Agreement Application:

<http://www.dfg.ca.gov/wahcb/1600.html>

401 WATER QUALITY CERTIFICATION FREQUENTLY-ASKED QUESTIONS

Q. What is “401” and why do I need to get a certification from a state agency for a federal permit?

A. There are two sections under the Clean Water Act that refer to permits required for dredge and fill projects within the waters of the United States. Section 404 authorizes the U.S. Corps of Engineers to issue the permits. They have been given this authority because they have jurisdiction over U.S. (navigable) waters. The Corps, however, does not have jurisdiction over water quality issues. The State Water Resources Control Board and Regional Water Quality Control Boards have this jurisdiction in California. Section 401 authorizes the states to issue water quality certifications for dredge and fill projects within U.S. waters.

What this all says is that you must get certification from us that your project will not significantly impact water quality or beneficial uses before the Corps can issue their permit.

Q. You also issue waste discharge requirements (WDR) and NPDES permits. Why do I also need to get a 401 certification?

A. 401 certification is for the duration of the dredge/fill operation. The WDR and NPDES permits are for continued operation of a project that will result in discharge to ground or surface waters of the state. If the dredge/fill operation will take place for a long period of time and will result in discharges to waters of the state, we have the option of issuing WDR or NPDES permits. This will be equivalent to a waiver of 401 certification.

Q. To whom should we address the application?

A. The application should be addressed to the Executive Officer of the Santa Ana Regional Water Quality Control Board. For quicker routing, send it to the attention of the 401 coordinator. A sample address block follows:

Mr. Gerard J. Thibeault
Executive Officer
California Regional Water Quality Control Board
Santa Ana Region
3737 Main Street, Suite 500
Riverside, CA 92501-3339

Attn: 401 Coordinator

Q. What comprises a complete application?

A. The “401 Certification Application-Information Package” outlines everything that we require for a complete application. In general, we need a copy of the federal permit application, the filing fee, a final CEQA document, and a complete description of the project, including where, size of project, anticipated environmental impacts, and mitigation for impacts.

Q. How long will it take to get my certification or waiver?

A. If the proposed project requires a certification, which must be processed by our State Board staff, it may take up to 60 days or longer. Waivers are processed by us (Regional Board staff), and may take from 21 to 60 days, depending on the complexity of the project and our workload. These time estimates are from when we receive a complete application. Additionally, a more thorough project description will expedite processing. A template of the 401 waiver letter is available in Word 97 or plain text format. Providing your project information in the waiver letter format will save on processing time.

Q. When will you notify me if I need to send you additional information?

A. We will notify you within 30 days of our receiving the application. You may wish to check with us if you do not hear anything within two weeks.

Q. How much does it cost?

A. Section 2200, Title 23 of the California Code of Regulations specifies the filing fee based on area of fill or volume of material dredged. This information is also outlined in the application package. For projects that will require a certification, this is the fee that you must remand to us before we can complete processing the application.

Many of the projects for which we get applications are minor in nature and can be processed as a waiver. We have determined that processing a waiver costs \$500 worth of staff time. To save time and paperwork, we will accept the \$500 waiver fee up front, although we will require that you submit the remainder of the filing fee if further review indicates that a certification is necessary. We recommend that you first confer with someone in the Planning Section to verify that your project would qualify for a waiver.

Q. I also have to file with the Corps of Engineers, Department of Fish and Game, and possibly other local agencies. Do I have to repeat the information that I already gave to them on yet another form?

A. No, we encourage applicants to reference in the application letter where in the materials they send us we can find the information we need. Some of the information we ask for will be contained in the applications sent to the Corps or Fish and Game; that will work for us. The easier you make it for us to find the information we need, the quicker we can get the certification or waiver processed. If you prefer to fill out a form, one is enclosed with this package.

Q. Is there a cutoff above which a project requires a certification rather than a waiver?

A. Our cutoff is based primarily on impacts to water quality and/or beneficial uses. A large project that will not degrade water quality will qualify for a waiver; a small project that may cause heavy siltation in a waterbody that has a lot of fish and other aquatic life will probably need a full certification.

Additionally, for us to issue a 401 waiver, a project must fall under one of our waiver categories. You can obtain a copy of Resolution No. 96-9, "Waiver of Waste Discharge Requirements for Specific Types of Discharges," by contacting our office. If a project does not meet the specified criteria for coverage under any of the waiver categories, we usually must issue a certification, Waste Discharge Requirements, or an NPDES permit. Waiving or issuing waste discharge requirements is considered equivalent to waiving 401 certification.

The Waiver Categories include:

- Minor Dredging Projects (<1,000 cubic yards)
- Inert Waste Disposal Operations
- Bridge Seismic Retrofitting
- Projects Which Impact Wetlands and/or Riparian Habitats
- Sand, Gravel, and Quarry Operations
- Residential Wastewater Disposal Systems (septic tanks) Not Within Prohibition Areas
- Industrial and Commercial Wastewater Disposal Systems (septic tanks) Not Within Prohibition Areas
- Minor Stream Channel Alterations
- Monitoring Well Purge Water
- Well Drill Cuttings
- Incidental Discharge of Oily Wastewater During Oil Spill Response Activities
- Other Insignificant Discharges of Wastewater to Land (e.g., potable water pipeline draining, groundwater dewatering)

Q. This project is an emergency. How soon can you get the certification or waiver processed?

A. We consider only true emergencies as those defined by 33 CFR 325.2(e)(4) as a "situation which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures." This may include FEMA-funded projects or situations that pose an imminent danger to life or property. Waiting until the grading equipment is onsite before applying to us does not constitute an emergency.

For a waiver, we can get it processed as soon as you can get us a complete description of the project and evidence that the filing fee will be paid. We cannot give time assurances for certifications, but we will request that State Board staff expedite processing.

Q. What other permits will I have to get?

A. For State and Federal permits, you will need to apply for a Streambed Alteration agreement from the Department of Fish and Game and a 404 permit from the Corps of Engineers. If your project will affect coastal waters, you may need a permit from the California Coastal Commission. Projects that may impact endangered or threatened species will need a Biological Opinion form from the U.S. Fish and Wildlife Service. You will have to check with your city and/or county for local permits you may need.